

**THE DECISION AFFIRMED—CONVICTION AND SENTENCE OF MCKANE UPHELD.**

DECISION OF THE GENERAL TERM OF THE SUPREME COURT IN BROOKLYN—WHAT THE JUDGES SAY.

The General Term of the Supreme Court in Brooklyn has handed down a decision yesterday, affirming the judgment of conviction and sentence to six years of imprisonment of John V. McKane for felony in connection with the Gravesend election frauds last fall. The opinion was written by Judge Landau and concurred in by Judges Brown and Dykman. The opinion covered sixty typewritten pages. The various exceptions taken by McKane's counsel to the evidence presented at the trial were considered, but none of the objections is held to be well founded. On the point raised by the defence that the Governor could convene a Court of Oyer and Terminer and not a term of Oyer and Terminer, the Court holds that this is merely a play upon words, and the fact remains that the Grand Jury set and found the indictment against McKane. In regard to the objection that the indictment on which the defendant was tried contained three separate counts, any one of which was a crime itself, and therefore three indictments should have been drawn, the court gives the right to group allied crimes and so subject to two of such counts and abandon the third. In regard to the admission of evidence, it is held that if a conspiracy to conceal the registry did exist then the acts and declarations of the conspirators were admissible in evidence. The rule that the conspiracy must first be proved ought not to be so rigidly enforced that justice would be denied, says the opinion. In the consideration of the evidence the circumstances tending to prove a conspiracy must be taken into consideration, and among the things to be considered should be the motive which would prompt a conspiracy, and the effect to be gained by it; the means and ability to form a conspiracy, tending to show the power of the defendant as a leading officious in the town of Gravesend, and his opportunity to carry out such a conspiracy, as all the polling-places were in the town Hall. It was also important to show that Mr. Gaynor wanted to see the registry lists and what was to be gained by withholding them from him. In this connection testimony to the conspiracy could be admitted. The remarkable coincidence in the sequence of names on the voting lists gave internal evidence of fabrication, and the lists showed that the election inspectors were co-conspirators. The conversation between McKane and E. M. Groat over the telephone was also held to be ruled out, as tended to prove the conspiracy and showed that McKane was a party to the effort to conceal the registry lists. The objection that McKane was not a registry officer was fully covered by Section No. 2 of the Penal Code, which makes any one who aids and abets the commission of a crime a principal. If the jury had had a reasonable doubt on the evidence of the power of McKane to form and manage the conspiracy, he would have been acquitted. The note on his part and his means and ability to commit the crime, together with his opportunity to do it, were fully shown.

In ending the opinion the judges say:

"Several witnesses were called by the defendant to testify to his good reputation. On cross examination the People were permitted to ask them as to his reputation in connection with certain specific directions involving a questionable use of his power, and this was permissible. The defendant having introduced evidence of general estimation that his reputation was good, the People were certainly at liberty to show, upon cross-examination, what it was in respect of important particulars, certainly so within a reasonable range of the subject introduced by the defendant. It may be that some of the particulars thus introduced strengthened the case of the People in respect of the power and influence of the defendant among his constituents in the absence of objections to the right of cross-examination we cannot and error requires reversal from the fact that the defendant has now touched not only on his own character, but also on the character of the charge against him. To do this is to err would be to invite a defendant whose case is desperate to spread a net in which to ensnare the People."

The defendant's objection to the charge on the part of the People was that it was doubtful whether there were any exceptions. Written requests to charge which were made before counsel, were passed up by the defense before making the objection. The exceptions were that the opinion is especially made to the following portion of the charge in respect to the testimony of Mr. Mayes as referred to, to contrast with the telephone note of his in his interview with the defendant. In the latter said in effect that he did give to the person in charge of the town hall orders not to allow any person to have a copy of the paper which was given him. Now if the defendant did not fully acknowledge giving a direction of this kind, that admission, in connection with other circumstances, would tend to sustain the charge that he did not have full control over the record lists if not actual custody of them. It may be said to ample evidence that did thus sustain some affirmative or negative admissions.

"Each admission implies so much. It was not an error of the judge to say so of the testimony in question. He did not say how nearly it tended. It is held undertaken to say that it would have been dangerous to insist on the production of the jury. Elsewhere the court brought out the distinction that while it might be light to the evidence tending to establish some facts in the case, it would be to try to determine whether it was the intent of the People to do it establish it. We may safely assume, we think, that at the time this distinction was clearly understood.

"Instructions given by the court as to the defendant's right to the posting and accessibility of the registry lists and votes seemed to be favorable to the inspectors to the extreme limit of permissibility. The criticism of other portions of the charge did not call for us to require special mention. Finally, the defendant contends that the verdict is against the evidence.

The foregoing is in the main confined to the examination upon the witness stand which was deemed worthy of written mention. This examination served to develop to some extent the nature of the case. We do not think it necessary to undertake the additional task of quoting the charges of the testimony given in the present presentation of the whole case. It will suffice to say that we have examined and the examination satisfied us that the verdict as offered is justified by the evidence. Justice of the conviction confirmed."

**A SMALL MENAGERIE ON THE ELYSIAN.**

When the steamer Elysia, of the Anchor Line, arrived here yesterday she brought a lot of animals and birds consigned to "Oliver Belmont." The menagerie came from Calcutta to Gibraltar on the steamer Bohemia, and were transferred to the Elysia. They will be sent to Mr. Belmont's country place. There was a herd of six Indian cows and calves, said to be the property of W. K. Vanderbilt, in the collection from the East. Then five Chinese ducks, pheasants, monkeys, partridges, squirrels, and fowls. It is supposed that the "Oliver Belmont" to whom the animals are consigned is Oliver H. P. Belmont. There were two cots, one for the collection which had come across the ocean, and one for the voyage. Two deer and three ducks also died on the voyage. Among the curious birds in the collection are two red-headed pigeons. These pigeons are white with a bright red spot on the breast and bill. The collection was in charge of an East Indian.

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**WEST POINT, NEWBURGH AND POUGHKEEPSIE.**

EARLY EXCURSIONS, BY DAY LINE STEAMERS NEW-YORK, and WEST POINT, NEWBURGH, and POUGHKEEPSIE, Aug. 1. — West Point, 10 a.m.; Newburgh, 12 m.; Poughkeepsie, 1 p.m. — Return, in New York, at 20 m. MORNING AND AFTERNOON CONCERTS.

Select Sunday Afternoon Excursion TO WEST POINT.

STEAMER MARY POWELL.

Leaves West Point at 2 p.m., arriving at West Point at 4 p.m. — returning on any of the WEST SHORE RAILROAD TRAINS. This will give passengers ample time to see CADETS in Camp. Government Buildings, &c. FARE for the round trip, \$1.00.

SATURDAY AFTERNOON EXCURSION TO WEST POINT.

STEAMER MARY POWELL.

Leaves West Point at 2 p.m., returning at 4 p.m. —

Arrives at Fulton's, Brooklyn, at 8 a.m. — returning, in New York, at 20 m.

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MORNING AND AFTERNOON CONCERTS.

At the FOURTH PRESBYTERIAN CHURCH, West 11th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Friday.

AT THE SIXTH PRESBYTERIAN CHURCH, 36th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Saturday.

AT THE SEVENTH PRESBYTERIAN CHURCH, 36th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Sunday.

AT THE EIGHTH PRESBYTERIAN CHURCH, 37th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Monday.

AT THE NINTH PRESBYTERIAN CHURCH, 38th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Tuesday.

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AT THE ELEVENTH PRESBYTERIAN CHURCH, 40th and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Thursday.

AT THE TWELFTH PRESBYTERIAN CHURCH, 41st and Central Park West—Rev. JAMES MELTON, D.D., will preach at 11 a.m. and 8 p.m. on Friday.

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